IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1471 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? - **No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? - **No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? - **No.**

5 Whether it is to be circulated to the civil judge ? - **No.**

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KULPRITSING GURUBAXSING CHAVLA - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS SUBHADRA G PATEL for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 02/12/2005

ORAL JUDGMENT

1.Kalpritsing Gurubaxsing Chavla, petitioner has filed this petition under Article 226 of the Constitution of India for a writ of mandamus, quashing and setting

aside the impugned show cause notice dated 10/5/204, externment order dated 20/6/2005 passed by the respondent no.2 under the provisions of Bombay Police Act, externing the petitioner and further be pleased to quash and set aside the order passed by respondent no.3 dated 4/9/2005 by which the appellate authority has confirmed the order of externment in this behalf. Petition was filed on 17/10/2005.

2. This Court (My brother Mr.Justice A.S.Dave), has issued rule on 24/10/2005 which was returnable and therefore, this matter has came up for hearing to this Court.

3. Heard, Ms.S.G.Patel, learned advocate for the petitioner in this behalf. She has stated that the Assistant Commissioner of Police has issued notice on 10/5/2004 to the petitioner as to why he should not be externed from Ahmedabad, Ahmedabad (Rural), Gandhinagar, Kheda and Mehsana for a period of one year.

4. Respondent no.2, the Deputy Commissioner of Police has passed order of externment externing the petitioner from Ahmedabad, Gandhinagar, Kheda and Mehsana for a

period of one year on 20/6/2005.

5. Being aggrieved and dissatisfied with the same, the petitioner preferred an appeal against the order of externment before the respondent no.3 i.e. The Secretary, Home Department, Sachivalaya, Gandhinagar. The respondent no.3 pleased to dismiss the appeal of the petitioner on 4/9/2005.

6. Though there are several contentions in this behalf, the petitioner has confirmed one contention that in this case, the notice of externment was issued on 10/5/2004, where as the order of externment has been passed on 20/6/2005. There is unavoidable and unjustified delay in passing the said order in this behalf and once there is a delay in passing the order, this is only the ground on which the order can be quashed and set aside. In support of the same, she has relied upon the case of Dilaji Bharthaji Vihol v. Deputy Commissioner of Police and another, in Special Criminal Application No.1451 of 2005 decided on 1/12/2005.

7. On the other hand, the authority has not filed any

affidavit. Even the impugned order also does not give any reason as to why there is a delay in passing the order. Even the appellate authority also not deals with the said issue in this behalf.

8. In view of the reasons by which this Court has allowed the petition of Dilaji Bharthaji Vihol (supra) on 1/12/2005, I am of the opinion that this petition is also require to allow on the same ground. Order of externment dated 20/6/2005 is quashed and set aside and order dated 4/9/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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